

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EUGENE WHITE,

Plaintiff,

v.

COUNTY OF SACRAMENTO, et al.,

Defendants.

No. 2:23-cv-01857-DC-SCR

ORDER

Plaintiff is proceeding pro se, and this matter is referred to the undersigned pursuant to Local Rule 302(c)(21). Before the Court are Plaintiff's four motions: 1) motion to dismiss (ECF No. 30); 2) amended motion to dismiss (ECF No. 36); 3) motion to disqualify opposing counsel (ECF No. 38); and 4) motion to withdraw voluntary dismissal (ECF No. 39). The motions were taken under submission on February 5, 2025. ECF No. 44. The Court will grant Plaintiff's motion to withdraw the earlier-filed motions to dismiss, and deny Plaintiff's motion to disqualify opposing counsel.

I. Background and Procedural History

Plaintiff, while represented by counsel, commenced this action in Sacramento County Superior Court in October 2022. Plaintiff proceeds under 42 U.S.C. § 1983 and brings claims concerning his arrest in February 2021 and subsequent criminal charges. ECF No. 12. Plaintiff alleges the criminal case against him was dismissed in November 2021. *Id.* at 6. Defendants

1 removed the action to this Court on August 29, 2023. ECF No. 5. Thereafter, Plaintiff filed a
2 First Amended Complaint. ECF No. 12.

3 On October 24, 2024, Plaintiff's counsel filed a motion to withdraw. ECF No. 25. The
4 day before the hearing on the motion to withdraw, Plaintiff filed pro se a "Motion to Dismiss
5 without Prejudice" ("First Motion to Dismiss"). ECF No. 30. District Judge Coggins granted the
6 motion allowing counsel to withdraw on December 30, 2024, and referred the First Motion to
7 Dismiss to the undersigned. ECF No. 33 at 6.

8 Plaintiff has, since counsel withdrew, indicated that he will proceed pro se. ECF No. 37.
9 He filed an additional motion to dismiss ("Second Motion to Dismiss") on January 8, 2025. ECF
10 No. 36. Two days later, he filed a motion to withdraw his dismissal. ECF No. 39. He also filed a
11 motion to disqualify opposing counsel, to which defendants filed an opposition. ECF Nos. 38 &
12 43. The time for filing a reply has expired, and no reply was filed. Local Rule 230(e) (allowing
13 10 days for a reply to an opposition).

14 II. Motions

15 Pursuant to Federal Rule of Civil Procedure 41, a Plaintiff may dismiss an action without
16 court order by filing a notice of dismissal prior to the opposing party serving either an answer or
17 motion for summary judgment. Fed. R. Civ. P. 41(a)(1)(A)(i). Defendants have filed an answer.
18 Therefore, Plaintiff may dismiss by written stipulation signed by all parties who have appeared,
19 or "by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2).

20 Plaintiff's First Motion to Dismiss (ECF No. 30) seeks to dismiss his action without
21 prejudice. It was not a stipulated motion, but Defendants did file a statement of non-opposition
22 stating they did not oppose dismissal without prejudice. ECF No. 35. Plaintiff's Second Motion
23 to Dismiss again sought dismissal without prejudice. ECF No. 36.

24 However, Plaintiff thereafter filed a "Motion for Withdrawal of Non Heard Voluntary
25 Case Dismissal Without Prejudice." ECF No. 39. He states therein he "shall continue to
26 prosecute this CV action, Pro-Se, representing myself without legal counsel, until further notice."
27 *Id.* at 1. Plaintiff has also stated in other recent filings his desire to proceed with the case. *See*
28 ECF No. 37 at 2 ("I hereby, motion to withdraw my own motion for voluntary dismissal as

1 plaintiff without prejudice.”). The Court will grant the motion to withdraw the earlier motions to
2 dismiss. In the future, if Plaintiff wishes to voluntarily dismiss the action, he may do so by filing
3 a brief motion citing to Federal Rule of Civil Procedure 41(a)(2), or he may submit a stipulated
4 notice of dismissal pursuant to Rule 41(a)(1)(A)(ii).

5 Plaintiff also filed a motion for disqualification of opposing counsel. ECF No. 38. The
6 motion sets forth no coherent basis to disqualify opposing counsel. The motion cites to California
7 Rule of Professional Conduct 3.7 concerning lawyer as a witness, but Plaintiff appears to
8 complain of his own prior counsel, Joshua Schroeder, who was given leave to withdraw. Pages
9 three through seven of the motion are difficult to follow and contain graphics, the relevance of
10 which is unclear.¹ Opposing counsel are Jonathan Paul and Kristlenne Vicuna, and the motion
11 makes no reference to them by name and does not explain how either lawyer is likely to be a
12 witness a trial.

13 In determining whether to disqualify counsel, state law applies. See *In re County of Los*
14 *Angeles*, 223 F.3d 990, 995 (9th Cir. 2000) (“we apply state law in determining matters of
15 disqualification”). Because of the potential for abuse, disqualification motions are subject to
16 strict judicial scrutiny. *Optyl Eyewear Fashion Int’l Corp. v. Style Cos., Ltd.*, 760 F.2d 1045, 1050
17 (9th Cir. 1985). The party seeking disqualification bears the burden of establishing by a
18 preponderance of the evidence the basis for disqualification. *Storz Management Co. v. Carey*, 526
19 F.Supp.3d 747, 751 (E.D. Cal. 2021). “The disqualification of counsel is ‘generally disfavored
20 and should only be imposed when absolutely necessary.’” *Id.* at 752 (internal citation omitted).

21 Plaintiff’s motion does not set forth a clear argument for disqualification, and certainly
22 does not establish by a preponderance of the evidence a basis for disqualification. The motion is
23 denied.

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26 ¹ According to Defendants’ opposition, Plaintiff has repeatedly “superimposed a photograph of
27 defense counsel onto a screenshot from the video produced during discovery in this case and
28 likewise superimposed various text images upon the probable cause declaration of Deputy
Pantoja.” ECF No. 43 at 5 n.2.

III. Status Reports

Plaintiff is reminded of the February 14, 2025 deadline for the submission of status reports. See ECF No. 33. Defendants filed their status report on that date. ECF No. 45. To date, Plaintiff's status report has not been docketed. If Plaintiff has not yet sought to file a status report, he shall do so as soon as possible. Failure to do so may result in an order to show cause why this action should not be dismissed for failure to prosecute and failure to follow a court order.

Accordingly, **IT IS HEREBY ORDERED:**

1. Plaintiff's motion to withdraw his voluntary case dismissal (ECF No. 39) is GRANTED;
2. Plaintiff's motions to dismiss (ECF Nos. 30 & 36) are withdrawn and DENIED WITHOUT PREJUDICE; and
3. Plaintiff's motion to disqualify counsel (ECF No. 38) is DENIED.

SO ORDERED.

DATED: February 18, 2025


SEAN C. RIORDAN
UNITED STATES MAGISTRATE JUDGE